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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,321	08/27/2003	David Hancock	COMPN-65227	6881
24201	7590	10/11/2006	EXAMINER	
FULWIDER PATTON 6060 CENTER DRIVE 10TH FLOOR LOS ANGELES, CA 90045			BARRETT, THOMAS C	
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/650,321

Applicant(s)

HANCOCK ET AL.

Examiner

Thomas C. Barrett

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 3-6, 8, 12, 13, 15, 16 and 43-49 is/are pending in the application.
- 4a) Of the above claim(s) 3-5, 12, 13, 16 and 45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 6, 8, 15, 43, 44 and 46-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of claims 1, 6, 8, 15 and 43-49 in the reply filed on July 17, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 3-5, 12-13, and 16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 17, 2006. In addition, claim 45 is withdrawn by the examiner as being directed to a non-elected species.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 3-6, 8, 12-16 and 43-49 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 6, 8, 43-44 and 47 are rejected under 35 U.S.C. 102(e) as being anticipated by Pulnev et al. (6,007,574). Pulnev discloses a device (Fig. 1) comprising: an elongate filament configured into a pseudo-braided pattern and formed to define a generally tubular body with a first end and a second end, at least one of the first and second ends having a circumferential dimension; and at least one of said first and second ends each being defined by a plurality of circumferentially spaced endless reversals of direction of said filament (col. 5, lines 10-29). The embodiment of Fig. 3 has full-turn helical configurations for the reversals. The ends of the filament join in the middle of the device. In addition, the limitation "made from a tube" is being treated as a "product-by-process" limitation and is therefore given limited weight.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 46, 48 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pulnev et al. (6,007,574) as applied to claim 1 above, in view of Kavteladze et al (5,643,339) as cited in Applicant's IDS. Pulnev et al. discloses a device as above however does not disclose the device as having a variable cross-section, or self-expanding. Kavteladze et al teaches a self-expanding wire stent whose wire can have variable cross-sections (col. 4, lines 55-57). It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the teaching of a self-expanding wire stent whose wire can have variable cross-sections, as taught by Kavteladze et al, to the device as per Pulnev et al., in order to be able to adjust the axial stiffness of the device as in Kavteladze et al. In addition, Pulnev et al. discloses the device as made of shape-memory material. It is well known to ones of ordinary skill in the art to use shape-memory material for self-expanding stents, e.g. the stent of Kavteladze et al. In addition, though Pulnev et al fails to disclose reducing the device to less than 10% of its expanded diameter, it would be obvious to one of ordinary skill to make the device as small as possible for easier insertion into the vessel. As a practical matter, the Patent Office is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make physical comparisons therewith. A prima facie case of obviousness based on structural similarity is rebuttable by proof that the claimed compounds possess unexpectedly advantageous or superior properties. Even so, if enough pressure is exerted upon the device of Pulnev et al., it could be made extremely small, and obviously less than 10% of its expanded size.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pulnev et al. (6,007,574) as applied to claim 1 above, in view of Hyodoh et al (20030040772). Pulnev et al. discloses a device as above however does not disclose the device as having a variable cross-section, or self-expanding. Hyodoh et al teaches a wire stent whose wire free ends can be joined in a radiopaque sleeve (paragraph 0166). It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the teaching of a radiopaque metal sleeve, as taught by Hyodoh et al, to cover the free ends of the wire of the device as per Pulnev et al., in order to reinforce the joining of the ends.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

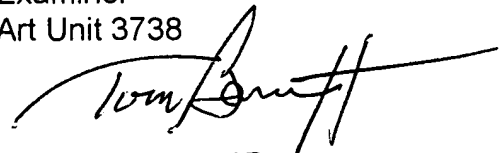
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas C. Barrett whose telephone number is (571) 272-4746. The examiner can normally be reached on Mon. -Fri. from 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Thomas C. Barrett  
Examiner  
Art Unit 3738

A handwritten signature in black ink, appearing to read 'Tom Barrett', with a long horizontal stroke extending to the right.

TOM BARRETT  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 3700